

the date on which the taxpayer's request for a taxpayer assistance order is denied, or agreement is reached with the involved function of the Service, or a taxpayer assistance order is issued (except that when the taxpayer assistance order is reviewed by an official who may modify or rescind the taxpayer assistance order as provided in paragraph (d) of this section, the decision date is the date on which such review is completed).

(3) *Periods suspended.* The periods of limitations which are suspended under section 7811(d) are those which apply to the taxable periods to which the application for a taxpayer assistance order relate or the taxable periods specifically indicated in the terms of a taxpayer assistance order.

Example 1. On August 31, 1989, the Internal Revenue Service levies on funds in the taxpayer's checking account. On September 1, 1989 (at which time 7 months remain before the period of limitations on collection after assessment will expire on April 1, 1990) the Ombudsman receives the taxpayer's written application for a taxpayer assistance order. Subsequently, on September 6, 1989, the Ombudsman determines that the levy has caused a significant hardship and the Internal Revenue Service function which served the levy agrees to release the levy. The levy is released. As a result of the application and the decision by the Ombudsman and the involved function of the Service resolving the hardship, the statute of limitations on collection after assessment is suspended from the date the Ombudsman received the application, September 1, 1989, until the date on which the decision was made to release the levy, September 6, 1989. Therefore, the statute of limitations on collection after assessment will not expire until after April 6, 1990, which is 7 months plus 5 days after the date on which the application for a taxpayer assistance order was received by the Ombudsman.

Example 2. The facts are the same as in example 1 except that the Internal Revenue Service function which served the levy does not agree to release the levy, and the Ombudsman, having made a determination that the levy is causing a significant hardship, issues a taxpayer assistance order on September 6, 1989, in which the levy is ordered to be released and specifies that the statute of limitations on collection after assessment is suspended for an additional 15 days. The period of limitations on collection after assessment will therefore not expire until after April 21, 1990, which is 7 months and 20 days (5 days plus 15 days) after the application for

the taxpayer assistance order was received by the Ombudsman.

Example 3. The facts are the same as in example 2 except that the Ombudsman does not specifically suspend the statute of limitations on collection after assessment for an additional number of days in the taxpayer assistance order, but rather the function seeks modification or rescission of the taxpayer assistance order and the appropriate official charged with that responsibility completes his consideration of the assistance order on September 8, 1989. The period of limitations on collection after assessment will therefore not expire until after April 8, 1990, which is 7 months and 7 days after the application for the taxpayer assistance order was received by the Ombudsman.

(4) *Absence of a written application.* The statute of limitations is not suspended in cases where the Ombudsman issues an order in the absence of a written application for relief by the taxpayer or the taxpayer's duly authorized representative.

(f) *Independent action of Ombudsman.* The Ombudsman may take any of the actions described in section 7811(b) in the absence of an application by the taxpayer.

(g) *Ombudsman.* The term "Ombudsman" includes any designee of the Ombudsman, such as Problem Resolution Officers in Internal Revenue Service regional and district offices and at Internal Revenue Service compliance and service centers.

(h) *Effective Date.* These regulations are effective as of March 20, 1992.

[T.D. 8246, 54 FR 11700, Mar. 22, 1989, as amended by T.D. 8403, 56 FR 9977, March 23, 1992]

MISCELLANEOUS PROVISIONS

§ 301.9000-1 Definitions when used in §§ 301.9000-1 through 301.9000-6.

(a) *IRS records or information* means any material (including copies thereof) contained in the files (including paper, electronic or other media files) of the Internal Revenue Service (IRS), any information relating to material contained in the files of the IRS, or any information acquired by an IRS officer or employee, while an IRS officer or employee, as a part of the performance of official duties or because of that IRS officer's or employee's official status with respect to the administration of the internal revenue laws or any other

laws administered by or concerning the IRS, IRS records or information includes, but is not limited to, returns and return information as those terms are defined in section 6103(b)(1) and (2) of the Internal Revenue Code (Code), tax convention information as defined in section 6105 of the Code, information gathered during Bank Secrecy Act and money laundering investigations, and personnel records and other information pertaining to IRS officers and employees. IRS records and information also includes information received, generated or collected by an IRS contractor pursuant to the contractor's contract or agreement with the IRS. The term does not include records or information obtained by IRS officers and employees, solely for the purpose of a federal grand jury investigation, while under the direction and control of the United States Attorney's Office. The term IRS records or information nevertheless does include records or information obtained by the IRS before, during, or after a Federal grand jury investigation if the records or information are obtained—

(1) At the administrative stage of a criminal investigation (prior to the initiation of the grand jury);

(2) From IRS files (such as transcripts or tax returns); or

(3) For use in a subsequent civil investigation.

(b) *IRS officers and employees* means all officers and employees of the United States appointed by, employed by, or subject to the directions, instructions, or orders of the Commissioner or IRS Chief Counsel and also includes former officers and employees.

(c) *IRS contractor* means any person, including the person's current and former employees, maintaining IRS records or information pursuant to a contract or agreement with the IRS, and also includes former contractors.

(d) A *request* is any request for testimony of an IRS officer, employee or contractor or for production of IRS records or information, oral or written, by any person, which is not a demand.

(e) A *demand* is any subpoena or other order of any court, administrative agency or other authority, or the Congress, or a committee or subcommittee of the Congress, and any notice of dep-

osition (either upon oral examination or written questions), request for admissions, request for production of documents or things, written interrogatories to parties, or other notice of, request for, or service for discovery in a matter before any court, administrative agency or other authority.

(f) An *IRS matter* is any matter before any court, administrative agency or other authority in which the United States, the Commissioner, the IRS, or any IRS officer or employee acting in an official capacity, or any IRS officer or employee (including an officer or employee of IRS Office of Chief Counsel) in his or her individual capacity if the United States Department of Justice or the IRS has agreed to represent or provide representation to the IRS officer or employee, is a party and that is directly related to official business of the IRS or to any law administered by or concerning the IRS, including, but not limited to, judicial and administrative proceedings described in section 6103(h)(4) and (l)(4) of the Internal Revenue Code.

(g) An *IRS congressional matter* is any matter before the Congress, or a committee or subcommittee of the Congress, that is related to the administration of the internal revenue laws or any other laws administered by or concerning the IRS, or to IRS records or information.

(h) A *non-IRS matter* is any matter that is not an IRS matter or an IRS congressional matter.

(i) A *testimony authorization* is a written instruction or oral instruction memorialized in writing within a reasonable period by an authorizing official that sets forth the scope of and limitations on proposed testimony and/or disclosure of IRS records or information issued in response to a request or demand for IRS records or information. A testimony authorization may grant or deny authorization to testify or disclose IRS records or information and may make an authorization effective only upon the occurrence of a precedent condition, such as the receipt of a consent complying with the provisions of section 6103(c) of the Internal Revenue Code. To authorize testimony means to issue the instruction described in this paragraph (i).

(j) An *authorizing official* is a person with delegated authority to authorize testimony and the disclosure of IRS records or information.

[T.D. 9178, 70 FR 7397, Feb. 14, 2005]

§ 301.9000-2 Considerations in responding to a request or demand for IRS records or information.

(a) *Situations in which disclosure shall not be authorized.* Authorizing officials shall not permit testimony or disclosure of IRS records or information in response to requests or demands if testimony or disclosure of IRS records or information would—

(1) Violate a Federal statute including, but not limited to, sections 6103 or 6105 of the Internal Revenue Code (Code), the Privacy Act of 1974 (5 U.S.C. 552a), or a rule of procedure, such as the grand jury secrecy rule, Fed. R. Crim. P. 6(e);

(2) Violate a specific Federal regulation, including, but not limited to, 31 CFR 103.53;

(3) Reveal classified national security information, unless properly declassified;

(4) Reveal the identity of an informant; or

(5) Reveal investigatory records or information compiled for law enforcement purposes that would permit interference with law enforcement proceedings or would disclose investigative techniques and procedures, the effectiveness of which could thereby be impaired.

(b) *Assertion of privileges.* Any applicable privilege or protection under law may be asserted in response to a request or demand for testimony or disclosure of IRS records or information, including, but not limited to, the following—

(1) Attorney-client privilege;

(2) Attorney work product doctrine; and

(3) Deliberative process (executive) privilege.

(c) *Non-IRS matters.* If any person makes a request or demand for IRS records or information in connection with a non-IRS matter, authorizing officials shall take into account the following additional factors in responding to the request or demand—

(1) Whether the requester is a Federal agency, or a state or local government or agency thereof;

(2) Whether the demand was issued by a Federal or state court, administrative agency or other authority;

(3) The potential effect of the case on the administration of the internal revenue laws or any other laws administered by or concerning the IRS;

(4) The importance of the legal issues presented;

(5) Whether the IRS records or information are available from other sources;

(6) The IRS's anticipated commitment of time and anticipated expenditure of funds necessary to comply with the request or demand;

(7) The number of similar requests and their cumulative effect on the expenditure of IRS resources;

(8) Whether the request or demand allows a reasonable time for compliance (generally, at least fifteen business days);

(9) Whether the testimony or disclosure is appropriate under the rules of procedure governing the case or matter in which the request or demand arises;

(10) Whether the request or demand involves expert witness testimony;

(11) Whether the request or demand is for the testimony of an IRS officer, employee or contractor who is without personal knowledge of relevant facts;

(12) Whether the request or demand is for the testimony of a presidential appointee or senior executive and whether the testimony of a lower-level official would suffice;

(13) Whether the procedures in § 301.9000-5 have been followed; and

(14) Any other relevant factors that may be brought to the attention of the authorizing official.

[T.D. 9178, 70 FR 7397, Feb. 14, 2005]

§ 301.9000-3 Testimony authorizations.

(a) *Prohibition on disclosure of IRS records or information without testimony authorization.* Except as provided in paragraph (b) of this section, when a request or demand for IRS records or information is made, no IRS officer, employee or contractor shall testify or disclose IRS records or information to any court, administrative agency or other authority, or to the Congress, or